



# THE PHILANTHROPIST

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EDITED BY G. BAILEY, JR.

CINCINNATI.

Friday, February 24, 1813.

## The Constitution and Slavery.

We took the ground sometime since, that the compact between the states in relation to the surrender of fugitives from service or labor, was a gross immorality, and therefore not binding upon the people of the several states. It was a compact to do a moral wrong, and could not stand in the court of Heaven or that of man. In regard to the new slave states, there are other considerations of a constitutional character, which may be urged.

Some years since, we threw out the idea, that the states formed out of the North Western Territory were not bound by constitutional stipulation, to surrender fugitive slaves, escaping from the new slave states. Above a year and half ago this point was taken up and discussed in the Cincinnati Gazette and the Philanthropist, by Mr. Birney and the editor of this paper, on the side, and in opposition to the views of those on the other. The discussion of our argument was this:

By the Congress of the confederation, 1787, an ordinance was passed for the government of the North West Territory. The ordinance contained a compact, enunciating six articles which were declared to be "foreverinalterableunless by common consent"—as follows:

"It is hereby ordained and declared by the authority aforesaid, that the articles shall be considered articles of compact between the original states and the territories and states of said territory, and shall *'forever remaininalterableunless by common consent.'*"

None of these articles has ever been altered, for no such "common consent" has been obtained. When states were organized in the territory, and admitted into the Union, they entered it with the obligations of these six articles binding upon them, nor could the constitution of the United States impair their force, for the parties to its formation had ratified, were not the parties to the compact in the ordinance. One of the articles was as follows:

"There shall be neither slavery nor involuntary servitude in the said territory, or otherwise than in punishment of crime, where the parties shall have been duly convicted; provided, always, that any person escaping into the said territory, from whom labor or service are demanded, shall be liable to be claimed in the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her service as aforesaid."

This article established, or more properly acknowledged, Liberty as the fundamental law of the territory, to which but one exception could exist, that of persons escaping from labor or service, from any one of the original states. By every just rule of interpretation, the exception being a natural right, must be construed *strictly*; and consequently, the right to reclaim fugitive slaves in the North West Territory was confined to the natural slaves, or those which might be born, were to have no such privilege.

The reason of the restriction is to be sought in the nature of the public sentiment of the times in which the ordinance was framed: the statesmen of that era with here & there an exception, contemplated the speedy extinction of slavery, and were unwilling to favor its extension by granting it any favor. This sixteenth time, however, never been assented by common consent—and therefore, we deny the right of the slaveholder, even under the constitution, in any of the new slave states, Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, Missouri, to reclaim his fugitive slave upon our soil.

2. There is another constitutional consideration, which has not hitherto been insisted on in this paper, but which is, I believe, also very in any of the new slave states over which Congress once exercised exclusive jurisdiction; so that even allowing so much comprehensive intent to the clause of the federal constitution relating to fugitives from service or labor, as the slaveholder in any of those states, (Missouri, Arkansas, Mississippi, Louisiana,) to reclaim in any of the other states, the fugitive from his service. For, if there be no legal slavery in these states, the system as existing in them can confer no rights.

The proposition just stated may appear startling to many persons; but, it is nothing more than a necessary inference from the true principles of the constitution in relation to slavery—principles which were advanced by the Hon. T. F. Marshall, of Kentucky, in a series of letters published two or three years since in the Franklin Commonwealth, in regard to the domestic slave-trade, principles, to which Judge McLean, in the great Mississippi case, gave his direct, unequivocal sanction—principles, which were embodied in the famous resolutions of Mr. Gilpin, for which he was then, and still is, a member of Congress, but which since then have commanded the assent of a majority of the thinking men of the country—principles which have been most clearly set forth, however, in the addresses of the state Liber-ty conventions of Ohio.

They are these—

1. The Constitution of the United States never regards slaves as *property*, but always as *persons*—never acts upon them as *property*, but always as *persons*.

2. Slavery is the creature of municipal law, and can have no existence beyond the laws which create it—the slaves, ceasing to be such the moment he passes beyond their jurisdiction.

Mr. Marshall assumed the first principle, to prove, that Congress had no power over the interstate slave-trade; for, it could not interfere with it except under the constitutional clause which empowers it to regulate commerce among the several states; but action under this clause for the suppression of the slave-trade between the states would involve the assumption that slaves were *property*, an assumption repudiated by the constitution which is the sole measure of the powers of congress.

As to the 2d of the principle, there ought to be no doubt of its confirmation in the memoirs of Mr. Gilpin, it is often quoted:—"He thought it wrong to admit the slaves into the constitution, that there could be property in them, the quotation should always be accompanied by the statement, that the phraseology of the constitution, (respecting the slave-trade,) to which he objected as involving this 'titles,' was so

## Pretensions.

Politicians appear to think it impertinent, that any class of men in this country should assume the name of "Liberty men." "Are we not all Liberty men?" they exclaim. Certainly, ye are all Liberty men. The patriots of the revolution were but babes in you, the knowledge and love of Liberty. How ye have grieved over the existence of slavery in your country. What difficulties it hath wrought in you! "yea, what clearing of yourselves, yes, what indignation, yes, what fear, yes, what rement desire, yes, what zeal, yes, what revenge!" In all things have ye approved yourselves to be clear in this matter! "Behold what your zeal hath wrought!" The reduction of the slave population from six hundred thousand, to twenty-five hundred thousand! The decrease of the number of slave states from seven to thirteen! The degradation of the slave-interest from a power represented by O, to supremacy! Yea, what zeal! in all things ye, white and democrat, have approved yourselves to be clear in this matter.

Are ye not all Liberty men? Ye are the salt of the land. How ye have sweetened the lump! Look abroad—in point of public spirit, generosity of party-feeling, devotion to the country's highest good, high-toned political morals, the purity of our national councils, the decorum of our legislative halls, the stability and worth of our legislation, is not this the Golden Era?

To make the demonstration complete, we shall quote *your own sayings*—and what better authority?

Thus, the Ohio Statesman spide forth on this wise:

WANT OF LIBERTY IN KENTUCKY.

The Kentuckyians say that there are only *three* democratic papers in Kentucky, which circulate not over 4,000 papers, two of them a thousand and each—the other two thousand.

It is not any wonder, from this, that the State is about chowing down, and that the *Ohio Statesman* is the only six thousand subscribers, with a rapidly increasing subscription; and we believe, the countenanced democratic papers in Ohio are liberally printed and circulated in the Union, and in the United States more numerously, and more generally than those of Ohio and for the last few years the democratic papers in Ohio have had a decided advantage over those of their opponents in spirit, talent and general interest.

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This was in fact a concession of the ground for which we contend—that no Department of the General Government has a right in any of its acts to assume that slaves are *property*.

Hence, Congress cannot sustain slavery, much less create—it for this would be to reduce men to the condition of *property*.

Nor can there be slaves on the high seas under the American flag, for the vessel is under the jurisdiction of the General Government, not of a particular state; and there are and can be, no federal laws to make or hold human beings, as property.

Nor is there any legal slavery in the District of Columbia. The slave laws of Maryland and Virginia regarded slaves as property. Congress enacted them, but they must be null and void, when once did Congress derive its power to treat men as property?

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